

APPLICANTS: Andrew & Amy Cassilly

REQUEST: Variance to permit a swimming pool within the required front yard setback in the Agricultural District

HEARING DATE: May 21, 2008

BEFORE THE

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

Case No. 5655

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Andrew & Amy Cassilly

LOCATION: 1737 Deths Ford Road, Havre de Grace
Tax Map: 36 / Grid: 1B / Parcel 288
Second (2nd) Election District

ZONING: AG / Agricultural District

REQUEST: Variance, pursuant to Section 267-34C, Table II, of the Harford County Code, to permit a swimming pool within the required 50 foot front yard setback (27 foot setback proposed), in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Andrew Cassilly, Co-Applicant, testified that he and his wife are seeking a variance to the required 50 foot front yard setback as required in an Agricultural District in order to construct a swimming pool with a 27 foot front yard setback.

The subject parcel is located at the corner of Deths Ford Road and Harmony Church Road. The property is located outside of the development envelope. The predominate land use designation is agricultural.

Mr. Cassilly explained that as originally designed, the pool was going to be closer to the home; however, he was concerned about safety. He requested that the 27 foot setback to the front property line be approved to accommodate his request.

The Applicant explained that his property is unique for several reasons. First, because of the grading of his home, there is no other location to place the swimming pool. The most level location on his property is closest to the home and on the front side of the property. Second, the Applicant has a geo-thermal heat system. The system runs off a line built on the left side of the property. The septic system is also located on that side of the property. In addition, the rear of the property is steep and is not an appropriate location for a pool.

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With respect to the concerns of the Department of Public Works, the Applicants submitted Exhibit No. 1, which is a pool landscaping diagram. It has not been submitted to the Department of Public Works as of this date. The Applicant believes their concerns have been addressed.

For the Harford County Department of Planning and Zoning testified Anthony McClune, Deputy Director. Mr. McClune testified that the property is unique. He visited the site and reviewed the neighborhood. The property sits on two road frontages. There are steep slopes to the rear of the property. The rear of the property is too steep to put any structures.

In reviewing the community, Mr. McClune noted that there are no dwellings across from where the pool will be built, if approved. He also noted there is minimal traffic on the road as it is in an agricultural district. Further, Deths Ford Road ends beyond the Applicants' property.

Mr. McClune also noted that if the variance is granted, the pool will be located 27 feet from the property line. It will also be located 57 feet from the center of Deths Ford Road. He said the pool would not be visible from the road. He also explained that the Department of Public Works requires bolders to be at least 14 feet from the road. They would like to review the final landscaping plan with respect to a safety issue and review what, if any affect, the berm will have on the road. He requested that if the variance is approved, the Department of Public Works review the final landscaping plan.

There was no testimony or evidence presented in opposition to the requested variance.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants have made a convincing showing that their lot, located at 1737 Deths Ford Road, is unique. The lot is unique in that the property has steep slopes behind the home. The subject property is also long and narrow. The unique shape and the topography of the lot limits where any additions can be placed. Further, the Applicants have installed a geo-thermal heating system and this limits where additional structures can be added. Obviously, by the unique nature of the property, and the already existing improvements, this severely impacts the owners' ability to improve their home with a swimming pool.

It is clear that the pertinent Code provision, i.e., the requirement that a front yard setback of 50 feet be maintained, impact the Applicants more than others because of the unique shape of the lot and the topography. For this reason, the Applicants suffer a practical difficulty in not being able to install a swimming pool. Further, the proposed swimming pool will sit approximately 6 feet below the roadway and will be screened by the natural topography and vegetation.

There is no evidence of any adverse impact on any adjoining property or the purpose of the Harford County Code if the variance were granted. The proposed pool will be located 27 feet from the road, which is not heavily traveled. Further, it will be 57 feet from the center of Deths Ford Road.

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CONCLUSION:

For the above reasons, it is recommended that the requested variance be granted, subject to the following conditions:

1. The Applicants shall obtain all necessary permits.
2. The Applicants shall submit a final landscaping plan to be reviewed and approved by the Planning Department and the Department of Public Works.

Date June 13, 2008

MICHAEL H. DANAY
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 14, 2008.